

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11	MANUEL GONZALEZ-LEYTON,)	Civil No. 08cv927-L(CAB)
12	Petitioner,)	
13	v.)	ORDER DENYING PETITIONER'S
14	MICHAEL CHERTOFF, SECRETARY)	MOTION FOR APPOINTMENT OF
15	OF THE DEPARTMENT OF)	COUNSEL AND EXTENDING TIME
16	HOMELAND SECURITY, <i>et al.</i> ,)	TO FILE TRAVERSE
17	Respondents.)	

18 In this habeas corpus proceeding pursuant to 28 U.S.C. § 2241, Petitioner filed a renewed
19 motion for appointment of counsel under 18 U.S.C. § 3006A, indicating that Federal Defenders
20 of San Diego, Inc., who assisted him in the preparation of the habeas petition and motions for
21 appointment of counsel, is willing to represent him as his appointed counsel.

22 Section 3006A(2)(b) provides that “[w]henver . . . the court determines that the interests
23 of justice so require, representation may be provided for any financially eligible person who is
24 seeking relief under section 2241 . . .” Appointment under section 3006A(2)(b) is discretionary,
25 *United States v. 30.64 Acres of Land*, 795 F.2d 796, 799 n.5 (9th Cir. 1986), and can be ordered
26 at any stage of the case if the interests of justice so require, *Weygandt v. Look*, 718 F.2d 952, 954
27 (9th Cir. 1983). “In deciding whether to appoint counsel in a habeas proceeding, the district
28 court must evaluate the likelihood of success on the merits as well as the ability of the petitioner

1 to articulate his claims *pro se* in light of the complexity of the legal issues involved.” *Weygandt*,
 2 718 F.2d at 954.

3 Petitioner was ordered removed to Nicaragua on or about July 25, 2007. (Decl. of
 4 Manuel Gonzalez-Leyton (“Decl.”) ¶ 6; Government’s Return in Opp’n to Pet. for Writ of
 5 Habeas Corpus (“Opp’n”), Ex. G.) His appeal to the Board of Immigration Appeals was
 6 dismissed on or about November 27, 2007. (Decl. ¶ 6.) On December 19, 2007, Petitioner
 7 appealed the order of removal to the Ninth Circuit and requested a stay of removal. (*Id.* ¶ 7 &
 8 Ex. A; Opp’n Ex. L.) The Court granted his motion and set a briefing schedule ending on or
 9 about October 31, 2008. (Decl. Ex. A.) Petitioner has been in immigration detention since April
 10 24, 2006, and seeks release from immigration custody pending his appeal to the Ninth Circuit.
 11 (*Id.* ¶ 2, 4.)

12 Petitioner’s success on the merits is not assured. Although Petitioner has been in
 13 immigration custody now for over two years, it appears that a large portion of that time was due
 14 to his repeated requests for continuances in the proceedings prior to the current appeal. (Opp’n.
 15 at 1-2 & Ex. C, G, H, J.) Petitioner seeks to be released during the pendency of his appeal. (Pet.
 16 at 3.) So far, however, the appellate proceedings have not been delayed and have proceeded in
 17 due course.


18 Although Petitioner asserts that neither he nor his family have the funds to retain counsel
 19 (Decl. ¶¶ 8-12), he is represented by retained counsel on his appeal to the Ninth Circuit and was
 20 represented by other retained counsel in the immigration proceedings before the appeal (*id.* ¶¶ 6,
 21 7). Petitioner has lived in the United States since he was three, graduated from high school in
 22 Los Angeles and speaks English fluently. (*Id.* ¶ 13.) The issues presented by the Petition are not
 23 appropriate for summary disposition without briefing, however, they are not particularly
 24 complex. Petitioner is therefore in no worse position to present his claims than many habeas
 25 petitioners who file their petitions in this court *pro se*.¹

26
 27 ¹ Petitioner had an attorney draft his petition and his motions for appointment of
 28 counsel. He has therefore deprived the court of the opportunity to more accurately assess his
 ability to articulate the claims *pro se*.

1 In light of the foregoing, interests of justice to not require appointment of counsel at this
2 time. Petitioner's motion for appointment of counsel is **DENIED**. If Petitioner wishes to reply
3 to the Respondents' responsive memorandum, the time to file his traverse is extended until no
4 later than **August 5, 2008**.

5 **IT IS SO ORDERED.**

6
7 DATED: July 14, 2008

8 
9 M. James Lorenz
United States District Court Judge

10 COPY TO:

11 HON. CATHY ANN BENCIVENGO
UNITED STATES MAGISTRATE JUDGE

12 ALL PARTIES/COUNSEL

13 Manuel Gonzalez-Leyton
14 A73-809-412
San Diego Detention Center (CCA)
15 P.O. Box 439049
San Ysidro, CA 92143-9049